

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-20184-WILLIAMS/REID

UNITED STATES OF AMERICA,

v.

BRIAN LA PLANTE,

Defendant.

REPORT AND RECOMMENDATION ON CHANGE OF PLEA

This matter is before the Court upon the Honorable Kathleen M. Williams's Order of Referral [ECF No. 28], to conduct a Change of Plea Hearing by the Defendant in this case. The Court having conducted the Change of Plea Hearing on November 30, 2022, **RECOMMENDS** that the Defendant, Brian La Plante's change of plea be accepted for the following reasons:

1. The Court convened a hearing to permit Defendant to enter a change of plea. At the outset of the hearing, Defendant was advised of his right to have these proceedings conducted by the District Judge assigned to his case. Additionally, it was explained that the District Judge assigned to this case would be the sentencing judge and conduct the sentencing hearing, and would make all findings and rulings concerning Defendant's sentence, and whether to accept the Government's recommendation as to sentencing.

2. Defendant was informed that he did not have to permit the Undersigned United States Magistrate Judge to conduct the Change of Plea Hearing and could request that the Change of Plea Hearing be conducted by the District Judge assigned to the case. Defendant, his attorney, and the Government all consented on the record the Undersigned conducting the Change of Plea Hearing.

3. The Court conducted a plea colloquy in accordance with Fed. R. Crim. P. 11.

4. The parties entered into a written plea agreement in this case. The Undersigned has reviewed the agreement on the record and had the Defendant acknowledge on the record that he signed and understood the plea agreement. Defendant pleaded guilty as to Count 2 of the Indictment, charging Defendant with distribution of child pornography in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). The Government agreed to seek dismissal Counts 1, 3, and 4, the remaining counts of the Indictment against Defendant, after sentencing.

5. The Court ensured that Defendant understood the terms of the plea agreement and that the plea agreement represented, in its entirety, the understanding Defendant has with the Government.

6. The Government stated on the record a factual basis for the entry of the plea that included all of the essential elements of the offense to which Defendant is pleading guilty and any sentencing enhancement and/or aggravating factors that may be applicable. Specifically, the Court reviewed with Defendant the Government's factual proffer, to assure that a factual basis for the entry of the plea exists. Defendant assented to the accuracy of the proffer and acknowledged his participation in the offense. Further, the Court reviewed with Defendant the possible minimum and maximum penalties for the charged offense. Defendant acknowledged that he understood these possible penalties. The Court advised Defendant that the maximum sentence that may be imposed is a sentence of twenty years imprisonment, followed by a term of supervised release of at least five years and up to life. Defendant was further advised that the Court must impose a statutory minimum term of imprisonment of five years. The Court also advised Defendant that in addition to a term of imprisonment and supervised released, the Court may impose a fine of up to \$250,000,

restitution, and forfeiture, and will impose a special assessment in the amount of \$100, as well as an additional \$5,000 assessment under 18 U.S.C. § 3014.

7. Defendant acknowledged that he reviewed the Indictment, discussed the charges against him with his attorney, and was satisfied with the legal representation he received, and had a full opportunity to discuss the facts of the case with his attorney.

8. Further, the Undersigned inquired into whether Defendant had ever been treated for mental health or addiction issues, and whether he was under the influence of any prescribed or proscribed substances at the time of the Hearing. Based on Defendant's responses to these inquiries, the Court determined Defendant was competent and able to fully understand the proceedings.

9. Based upon the foregoing and the plea colloquy conducted by the Court, its recommended that Defendant be found to have freely and voluntarily pleaded guilty as to Count 2 of the Indictment and that Defendant be adjudicated guilty of the offense charged.

10. A pre-sentence investigation report is being prepared. Sentencing is set for February 1, 2023, at 2:00 p.m. before the District Judge.

CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Defendant's guilty plea be accepted, Defendant be adjudicated guilty as to Count 2 of the Indictment to which he has entered a plea of guilty, and that a sentencing hearing be conducted for final disposition of this matter.

Objections to this Report may be filed with the district judge within **fourteen** (14) days of receipt of a copy of the Report. Failure to timely file objections waives a party's right to review issues related to the Defendants' plea under Fed. R. Crim. P. 11 before the District Judge or the Court of Appeals. *See* Fed. R. Crim. P. 59(b)(1), (2); 11th Cir. R. 3-1; *Harrigan v. Metro-Dade Police Dep't Station #4*, 977 F.3d 1185, 1191-92 (11th Cir. 2020); 28 U.S.C. § 636(b)(1)(C).

SIGNED this 30th day of November, 2022.



LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

cc: **United States District Judge Kathleen M. Williams;**

All Counsel of Record